**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 7604 of 1997**
**With**
**SPECIAL CIVIL APPLICATION No. 7645 of 1997**
**With**
**SPECIAL CIVIL APPLICATION No. 7646 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.A.PUJ**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**NIRUL VALJIBHAI GOTHI & 6 - Petitioners**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**
MR PV HATHI for Petitioners.
DELETED for Petitioner Nos. 3 - 4.
MR LB DABHI, AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 06/02/2006**

**COMMON ORAL JUDGMENT**

1.Since common issue is involved in all these three petitions, the same are being disposed of by this common judgment.

2.The petitioners have filed these respective petitions under Article 226 of the Constitution of India praying for the directions to the respondents to continue the petitioners in service as Lecturers on regular basis and not to terminate or discontinue their service at the end of the academic term, and in the alternative, to quash and set aside the order if passed in the meantime by the respondents terminating their services at the end of the present academic term. The petitioners have also prayed for the directions to the

respondents not to discontinue their services and not to give effect to any such order, if passed, and to grant them all eligible incidental benefits including payment of the vacation pay as is available to other regularly appointed employees. The petitioners have further prayed for the directions to the respondents to treat the petitioners as in continuous service on and from the dates of their appointments and to grant all consequential benefits flowing from their continuity of service including the benefit of payment of vacation salary for Diwali vacation. The petitioners have also prayed for interim relief in the said terms as has been granted in Special Civil Application No. 7351 of 1992.

3.Special Civil Application No. 7604 of 1997 was admitted and rule was issued on 17.10.1997. Ad-interim relief in terms of para 15 (E) of the petition was granted.

4.Special Civil Application No. 7645 of 1997 was admitted on 17.10.1997 and ad-interim relief in terms of para 15 (E) of the petition was granted. The Court has passed further order permitting to delete the name of petitioner No. 3.

5.Special Civil Application No. 7646 of 1997 was admitted and rule was issued on 21.10.1997 and ad-interim relief in terms of para 15 (E) of the petition was granted.

6.During the pendency of the aforesaid petitions, Civil Application No. 133 of 2006 was filed in Special Civil Application No. 7604 of 1997 for deleting the names of petitioner Nos. 3 & 4. Similarly, Civil Application No. 134 of 2006 was filed in Special Civil Application No. 7646 of 1997 deleting the name of petitioner Nos. 1 & 2. Both these Civil Applications were

disposed of on 16.01.2006 deleting the names of the respective petitioners.

7.All these petitioners were duly selected by the Departmental Selection Committee. As they were qualified as per the statutory recruitment rules framed for the appointment of Lecturers and Class-II posts, they were appointed as Lecturers in Govt. Colleges at Jamnagar and Junagadh on adhoc basis in the year 1990 and onwards. There was an express condition that their appointments were made till the regular candidates were selected by the GPSC. The petitioners were given intermittent breaks and were remaining at the mercy of the principal of the Govt. Colleges. They have filed these petitions and obtained necessary interim orders as was obtained by several such other adhoc lecturers. Some of the orders are placed on the record of these petitions.

8.GPSC issued an advertisement on 15.06.1998 for filling up 470 posts of Lecturers Class – II in different subjects and the selection were made on 21.01.2000. The petitioners have not been able to get clearance from GPSC though applied and the vacancies advertised were filled in. However, the petitioners were continued in service even thereafter because number of posts and the requirement by the Govt. were more than the posts advertised.

9.Mr. P.V. Hathi, learned advocate appearing for the petitioners invited the Court's attention to two decisions of this Court. The first decision is in the case of *Shah Jolly Chandravadan & Ors. V/s. State of Gujarat & Ors., 44 (2) G.L.R. 1190* and the second decision is in the case of *K.D. Vohra V/s. Kamleshbhai Gobarbhai Patel, 44 (2) G.L.R. 1343*. In the case of Shah Jolly (Supra), the Court has recorded the submission of the

learned Advocate General that after appointing G.P.S.C. Selected candidates in each subject, if Government finds that there is a scope to continue ad hoc appointees or to continue ad hoc appointees on the available vacancies, then State is ready to continue such ad hoc appointees till regularly selected candidates are made available. So, in that situation, the State can be directed to follow the principle of “last come first go” on the broad principle of equity. Based on this submission, the Court has issued the direction to treat all ad hoc lecturers as one class while appointing and adjusting the G.P.S.C. selected and recommended candidates. The Court has further directed that the principle of “last come first go” shall have to be applied and, therefore, the State was directed accordingly. The above decision of the Learned Single Judge was challenged in L.P.A. No. 485 of 2000 and other cognate matters before the Division Bench of this Court

and the Division Bench vide its order and judgment in the case of K.D. Vohra (Supra) observed that though, these *ad hoc* lecturers cannot be directed to be continued contrary to the Recruitment Rules, nor can they be ordered to be regularized by any mode not warranted by the statutory rules governing the appointments to the cadre of Lecturers, G.E.S., Class II (Collegiate Branch), in the facts and circumstances of the case, the Division Bench directed that these ad hoc Lecturers be treated as a separate class in view of their ad hoc continuance for nearly a decade due to reckless indifference in discharge of duties on the part of the executive and be considered for absorption in such posts as may be available with the Government or under the authority of the Government in consonance with the statutory provisions applicable to such posts.

10.Based on the aforesaid directions issued by

this Court in the aforesaid two decisions, Mr. Hathi has submitted that since the petitioners are continued even after the appointments of regular selectives since last 5 years and are given full available benefits and there is no threat of termination at present as the issue of absorption is pending consideration, the petitioners does not press the main relief claimed by them in each of the petition in view of the judgments of this Court. The petitions can be disposed of by permitting each of the petitioners to agitate the issues raised in the petition, if occasion arises.

11.Mr. L.B. Dabhi, learned Assistant Government Pleader appearing for the respondent has no objection if the order in the aforesaid terms is passed in this group of three petitions.

12.After having heard learned advocates appearing for the respective parties and after having

gone through the aforesaid two judgments of this Court, the Court is of the view that all these three petitions can be disposed off by observing that since there was no imminent threat of their termination and the issue of their absorption can be considered by the authorities depending upon the available vacancies and on the principle of “last come first go” and it is open for the petitioners to agitate the other issues which are raised in these petitions, if need so arises in future. Order accordingly.

13.Subject to the aforesaid directions, all the three petitions are accordingly disposed off. Rule discharged in each of the three petitions without any order as to costs. Interim relief granted earlier stands vacated.

**[K.A. PUJ, J.]**

**S***avariya*